

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 2:22-00205

TIFFANY BOWLIN

DEFENDANT’S SENTENCING MEMORANDUM

The defendant, Tiffany Bowlin, by counsel, Assistant Federal Public Defender Rachel E. Zimarowski, submits this memorandum for the Court’s consideration at her upcoming sentencing hearing.

I. 18 U.S.C. § 3553(a) Factors for Consideration

With a criminal history category of I and an adjusted offense level of 9, the advisory guideline range set forth in the Presentence Investigation Report (“PSR”) recommends a term of imprisonment between four and ten months with Zone B sentencing options. PSR ¶¶ 64-65. Ms. Bowlin respectfully requests the Court impose a within-Guidelines sentence of probation and relies upon the following 18 U.S.C. § 3553(a) factors in support of a non-custodial sentence.

1. The nature and circumstances of the offense.

Tiffany is a hardworking single mother raising two children—now 15 and 7 years old—on her own, without the benefit of paternal involvement or financial support. She was forced to drop out of high school when she became pregnant with her eldest child, but she preserved. She earned a GED, taught herself about

computers, and secured a career in technical support that has lasted more than a decade. She was successful enough that, before the pandemic began, her then-employer promoted her to a recruiter position that came with additional hours and a higher hourly wage. As COVID-19 began to spread, however, everything changed. Her employer decided that it no longer needed a recruiter and rescinded her promotion.

Tiffany was devastated. She was counting on her new salary to support her family, and her employer's decision to demote her back to her original position (instead of terminating her outright) made her ineligible for pandemic unemployment assistance. She was stuck with an unsustainable salary, no alternative job prospects, and a support system—including both of her children's schools—that essentially evaporated overnight. It was against this backdrop that she began seeing ads on social media promising “free money” and loan qualification in “less than 30 seconds.”¹ Soon, it seemed like almost everyone she knew had managed to secure a “free” loan.²

¹ See, e.g., *Are PPP Loan Companies Legit? PPP Loans Are Being Aggressively (And I Suspect Deceptively) Marketed*, Medium (Mar. 23, 2021), available at <https://medium.com/web-design-web-developer-magazine/are-ppploan-companies-legit-ppp-loans-are-being-aggressively-and-i-suspect-deceptively-marketed-2fa99e7ec6fb> (last visited April 27, 2023).

² Congress and the SBA removed controls and safeguards from the PPP loan program in order to flood the economy with money as quickly as possible. See Hannibal Ware, *Independent Auditor's Report on SBA's FY 2021 Financial Statements*, Report 22–05 (November 15, 2021) (concluding that the SBA “did not adequately design and implement controls to ensure PPP loans guarantees approved [were in existence and accurate.]”); see also Nick Schwellenbach, Neil Gordon, Sean Moulton, and Leslie Garvey, *The Great Pandemic Swindle: Feds Botched Review of Billions in Suspect PPP Loans*, Project on Government Oversight (October 6, 2022), available at

Buoyed by these social media success stories, Tiffany decided to jump on the bandwagon. With the clumsiest of frauds—she claimed to own a hair salon with reported earnings of \$106,000 in tax year 2020, which even the most rudimentary of loan verification procedures would have proven false in an instant—she ultimately obtained a \$20,833 loan and forgiveness for the same. She used most of the money to pay bills and provide for herself and her family.³ She is deeply ashamed of herself, and she accepts full responsibility for her criminal conduct.

2. The history and characteristics of the defendant.

a. Lack of Criminal History

With zero criminal history points, Ms. Bowlin is in a rare category of federal offenders. Recidivism data analyzed by the Sentencing Commission suggests that offenders with zero criminal history points have considerably lower recidivism rates

<https://www.pogo.org/investigation/2022/10/the-great-pandemic-swindle-feds-botched-review-of-billions-in-suspect-ppp-loans>. As a result, private loan servicers were able to reap millions in profits—the more loans they issued, the more processing fees they received—by focusing their budgets on advertisements to drive up applications while spending next to nothing on fraud detection and prevention. See Select Subcommittee on the Coronavirus Crisis, *We Are Not the Fraud Police: How Fintechs Facilitated Fraud in the Paycheck Protection Program*, Staff Report (December 2022); Ken Dilanian and Laura Strickler, *Biggest Fraud in a Generation: The Looting of the COVID Relief Plan Known as PPP*, NBC News (March 28, 2022), available at <https://www.nbcnews.com/politics/justice-department/biggest-fraud-generation-looting-covid-relief-program-known-ppp-n1279664>.

³ Notably, nearly three-quarters of PPP funds “flowed to the top fifth of household income.” See David Autor et al., *The \$800 Billion Paycheck Protection Program: Where Did the Money Go and Why Did It Go There?*, Journal of Economic Perspectives (Spring 2022), available at <https://blueprintcdn.com/wp-content/uploads/2022/01/jep.36.2.55.pdf>.

than all other categories of offenders. *See* U.S. Sent’g Comm’n, *Recidivism of Federal Offenders Released in 2010* (2021).

b. Family Responsibilities

Tiffany is the custodial parent and primary caregiver for her two young children. The academic research is uniform: “Incarceration of a parent normally causes major negative economic, social, and psychological consequences to the child, and may have life-long [adverse] repercussions.” *United States v. G.L.*, 305 F.R.D. 47, 50 (E.D.N.Y. 2015) (collecting literature). If Tiffany is given a custodial sentence, her children are likely to “suffer developmental harm . . . in the form of behavioral and educational difficulties” as a result of her absence, Sarah Abramowicz, *Beyond Family Law*, 63 Case W. Res. L. Rev. 293, 321 (2012), along with a heightened risk of “diminished life chances and criminal involvement.” Bruce Western & Becky Pettit, *Incarceration and Social Inequality*, Daedalus, Summer 2010, at 16.

c. Education and Employment

Tiffany’s educational accomplishments and unbroken employment history demonstrate her ability and willingness to satisfy her restitution obligation. If she receives a custodial sentence, her resulting unemployment would unnecessarily hinder her ability to repay the SBA.

3. The need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct.

To date, the undersigned is aware of two other defendants in this district who have been sentenced for similar conduct. Malik Breckenridge fraudulently obtained

\$41,666 in PPP loans—more than double Tiffany’s loss amount—and received five years of probation. *See United States v. Malik Breckenridge*, Case No. 2:22-cr-00084 (S.D. W.Va. Nov. 17, 2022) (Berger, J.). Alexis Ransom, too, nearly doubled Tiffany’s loss amount and received five years of probation. *See United States v. Alexis Ransom*, 2:22-cr-00122 (S.D. W.Va. Feb. 7, 2023) (Faber, J.).

The Court should also consider that Tiffany’s willingness to enter into one of this district’s first plea agreements re: PPP fraud has placed her at a disadvantage relative to more recent prosecutions. In cases with nearly identical facts, the government has adopted a new policy of permitting defendants to plead guilty to receipt of stolen property in violation of 18 U.S.C. § 2315 instead of wire fraud in violation of 18 U.S.C. § 1343. *See United States v. Aalik Wilsher*, No. 2:23-cr-00051 (Goodwin, J.) (\$20,459 loss amount); *United States v. Tamir Pratt*, No. 2:23-cr-00038 (Goodwin, J.) (\$20,832 loss amount). Because the receipt of stolen property offense carries a 10 year (as opposed to 20 year) maximum sentence, these defendants begin at a lower base offense level under U.S.S.G. § 2B1.1 and face an advisory guideline range of zero to six months in Zone A of the sentencing table. Tiffany deserves the same consideration.

Along these same lines, the Court should consider that the Sentencing Commission has proposed an amendment to U.S.S.G. § 4C1.1 that would grant Tiffany, and other zero-point offenders, an additional two-level reduction in their overall offense level. *See U.S. Sent. Comm’n, Proposed Amendments to the Sentencing Guidelines*, at 11 (April 5, 2023), available at

https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230405_prelim-RF.pdf (last visited April 27, 2023). These

amendments are scheduled to take effect on November 1, 2023. If Tiffany were granted the benefit of this amendment—which she surely deserves—her advisory guideline range would be, once again, zero to six months in Zone A of the sentencing table.

4. Need for the Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, and Provide Just Punishment

The proposed sentence of probation would adequately reflect the seriousness of Tiffany’s conduct and provide just punishment for her offense. As the Supreme Court has recognized, a sentence of probation is “a substantial restriction of freedom.” *Gall v. United States*, 552 U.S. 38, 48 (2007). Tiffany will be closely monitored by the Probation Office for the entirety of her probationary term, and she is very aware that if she were to violate any term of probation, the Court could re-sentence her to a term of imprisonment within, or above, her suggested guideline range.

Furthermore, the instant felony conviction—and its attendant negative consequences—will be with Tiffany for the rest of her life. She has permanently lost many important civil rights, and she will be limited in terms of her future employment, housing, and educational opportunities. Indeed, she will have to fight to overcome the substantial barrier of being labeled as a felon, and a fraud, for the remainder of her working life. *See, e.g., James B. Jacobs, The Eternal Criminal*

Record 275–300 (Harvard Univ. Press 2015) (describing the many ways in which a criminal record impedes obtaining employment).

5. Need for the Sentence to Afford Adequate Deterrence and Protect the Public.

As noted above, Tiffany has zero criminal history points, which demonstrates that she poses a low risk of reengaging in criminal conduct or otherwise posing a threat to anyone in her community in the future. For such offenders, Congress has recognized that it is “generally appropriate[]” to “impose a sentence other than imprisonment.” 28 U.S.C. § 994(j); *see also* U.S.S.G. § 5C1.1 cmt. n.4 (directing that sentencing courts “should consider imposing a sentence other than a sentence of imprisonment” for nonviolent first offenders).

Tiffany’s life has been forever altered, and for nothing. She has to repay every cent of the money, and all she has to show for it is the permanent stigma of being a felon and object of public shame. She is well and truly deterred, as anyone would be when faced with such consequences. A sentence of incarceration is unnecessary to achieve any additional deterrence in this case. *See, e.g.,* Michael Tonry, *Purposes and Functions of Sentencing*, 34 *Crime and Justice: A Review of Research* 28-29 (2006) (“[E]very major survey of the evidence” has concluded that “increases in severity of punishments do not yield significant (if any) marginal deterrent effects.”).

II. Conclusion

For the foregoing reasons, Tiffany submits that a probationary sentence is sufficient, but not greater than necessary, to achieve the statutory sentencing purposes of 18 U.S.C § 3553(a).

III. Time Needed for Sentencing

Tiffany does not anticipate calling any witnesses to testify at the upcoming sentencing hearing and believes the hearing will last approximately half an hour.

Date: April 27, 2023.

Respectfully submitted,

TIFFANY BOWLIN

By Counsel

**WESLEY PAGE
FEDERAL PUBLIC DEFENDER**

s/ Rachel E. Zimarowski

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